



## DEPARTMENT OF THE INTERIOR

### Fish and Wildlife Service

[FWS–R2–ES–2020–N156; FXES11140200000–212–FF02ENEH00]

#### **Application for an Incidental Take Permit; Habitat Conservation Plan and draft Environmental Assessment for Wildhorse Mountain Wind Project, Pushmataha County, Oklahoma**

**AGENCY:** Fish and Wildlife Service, Interior.

**ACTION:** Notice of availability; request for comments.

**SUMMARY:** We, the U.S. Fish and Wildlife Service (Service), announce the availability of a draft environmental assessment (dEA) under the National Environmental Policy Act (NEPA), and application for an incidental take permit (ITP) supported by a habitat conservation plan (HCP) for the operation of an existing wind facility, the Wildhorse Mountain Wind project (project), in Pushmataha County, Oklahoma. Wildhorse Wind Energy, LLC (Applicant) has applied for an ITP under the Endangered Species Act of 1973, as amended. The requested ITP, which would be in effect for a period of 30 years, if granted, would cover incidental take of the federally endangered Indiana bat and threatened northern long-eared bat. The potential incidental take would

be associated with activities associated with the operation of the existing wind project.

We invite public comments on the permit application, proposed HCP, and dEA.

**DATES:** *Submission of Comments:* We will accept comments received or postmarked on or before [INSERT DATE 30 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER].

**ADDRESSES:** *Obtaining documents:* The documents this notice announces are available for public inspection by any of the following means.

*Internet:* You may obtain electronic copies of the dEA and HCP on the Oklahoma Field Office website at <http://www.fws.gov/southwest/es/oklahoma/>.

**U.S. Mail:** You may obtain the documents at the following addresses. In your request for documents, please note that your request is in reference to the Wildhorse Mountain Wind Project HCP and dEA.

- EA and HCP: A limited number of CD-ROM and printed copies of the EA and HCP are available, by request, from Ken Collins, Acting Field Supervisor, Oklahoma Ecological Services Field Office, Tulsa OK, telephone 918-581-7458.
- The ITP application is available by mail from the Regional Director, U.S. Fish and Wildlife Service, P.O. Box 1306, Room 6034, Albuquerque, NM 87103.

*Submitting comments:*

You may submit written comments by one of the following methods:

- *Email:* okes\_nepa@fws.gov; or

- *Facsimile*: 918–581–7467, Attn: OKES Wildhorse Mountain Wind Project HCP EA.
- *U.S. mail*: Field Supervisor, Oklahoma Ecological Services Field Office, 9014 East 21st Street, Tulsa, Oklahoma 74129-1428.

Please specify that your information request or comments concern the Wildhorse Mountain Wind Project EA/HCP.

**FOR FURTHER INFORMATION CONTACT:** Ken Collins, by U.S. mail at the U.S. Fish and Wildlife Service, Oklahoma Ecological Services Field Office (at the Tulsa street address above), or by phone at 918–581–7458. If you use a telecommunications device for the deaf (TDD), please call the Federal Information Relay Service at 800–877–8339.

**SUPPLEMENTARY INFORMATION:** The Applicant has applied to the Service for an ITP under section 10(a)(1)(B) of the Endangered Species Act of 1973, as amended (ESA; 16 U.S.C. 1531 *et seq.*). The requested ITP, which would be in effect for a period of 30 years, if granted, would authorize incidental take of the federally endangered Indiana bat (*Myotis sodalis*) and threatened northern long-eared bat (*Myotis septentrionalis*) during the operation of an existing wind facility in Pushmataha County, Oklahoma.

In total, the plan area is 13,731.6 acres, including the 13,641.6-acre wind facility and an off-site mitigation area (90 acres of contiguous forested habitat in Pushmataha County). The facility, constructed in 2019, consists of 29 wind turbines, with a total generating capacity of 100 megawatts.

Activities potentially causing take include the operation of the existing 29 wind turbines. The Applicant has proposed a HCP that would be implemented to address project impacts to the Indiana bat and northern long-eared bat.

We are notifying the public of the Applicant's proposal of an HCP and request to the Service for an ITP to cover incidental take of the Indiana bat and northern long-eared bat associated with the operation of the Wildhorse Mountain Wind facility. In addition, we are notifying the public of the Service's preparation of a dEA regarding impacts of the requested action or feasible alternatives, of an opportunity for public comment on our action, and of our intention to finalize the environmental assessment after consideration of public comment.

## **Background**

Section 9 of the ESA prohibits "take" of fish and wildlife species listed as endangered or threatened (16 U.S.C. 1531–1544). Under section 3 of the ESA, the term "take" means to harass, harm, pursue, hunt, shoot, wound, kill, trap, capture, or collect, or to attempt to engage in any such conduct (16 U.S.C. 1532(19)). The term "harm" is further defined by regulation as an act which actually kills or injures wildlife. Such acts may include significant habitat modification or degradation where it actually kills or injures wildlife by significantly impairing essential behavioral patterns, including breeding, feeding, or sheltering (50 CFR 17.3).

Under section 10(a)(1)(B) of the ESA, the Secretary of the Interior may authorize the taking of federally listed species if such taking occurs incidental to otherwise legal activities and where a conservation plan has been developed under ESA section 10(a)(2)(A) that describes (1) the impact that will likely result from such taking; (2) the

steps an Applicant will take to minimize and mitigate that take to the maximum extent practicable, and the funding that will be available to implement such steps; (3) the alternative actions to such taking that an Applicant considered and the reasons why such alternatives are not being utilized; and (4) other measures that the Service may require as being necessary or appropriate for the purposes of the plan. Issuance criteria under section 10(a)(2)(B) for an incidental take permit requires the Service to find that (1) the taking will be incidental to otherwise lawful activities; (2) an Applicant will, to the maximum extent practicable, minimize and mitigate the impacts of such taking; (3) an Applicant has ensured that adequate funding for the plan will be provided; (4) the taking will not appreciably reduce the likelihood of the survival and recovery of the species in the wild; and (5) the measures, if any, we require as necessary or appropriate for the purposes of the plan will be met. Regulations governing permits for endangered and threatened species are at 50 CFR 17.22 and 17.32, respectively.

### **Proposed Action**

The proposed action is the issuance of a 30-year ITP to authorize incidental take of up to 8 Indiana bats and 48 northern long-eared bats during the ITP term, resulting from activities covered by the HCP and associated with the operation of the existing Wildhorse Mountain Wind Project in Pushmataha County, Oklahoma. The plan area is 13,731.6 acres, of which 90 acres are protected mitigation lands to offset the impacts of the project.

The proposed HCP, which must meet the requirements in section 10(a)(2)(A) of the ESA, was developed in coordination with the Service and would be implemented by the Applicant. The proposed action will allow for the Applicant to comply with the ESA, and their renewable wind-generated energy would be made available to public utilities. Covered activities in the HCP include the operation of 29 wind turbines and the

conservation and preservation of 90 acres, called the mitigation area. The Applicant proposes to minimize and mitigate impacts to the Indiana bat and northern long-eared bat through conservation measures identified in the HCP.

## **Alternatives**

We considered one alternative to the proposed action as part of the environmental assessment process: the no-action alternative. The no-action alternative represents estimated future conditions without the issuance of an ITP. The no-action alternative represents the status quo.

Under the no-action alternative, the Service would not issue the ITP. The no-action alternative would be implemented if the Service denies issuance of a permit or if the Applicant chooses to abandon pursuing an ITP. The Applicant would operate the project without an ITP and would risk not being in compliance with section 9 of the Endangered Species Act if implementation of covered activities results in take of the Indiana bat or the northern long-eared bat without the use of a 4(d) rule.

## **Next Steps**

We will evaluate the permit application, associated documents, and comments we receive to determine whether the permit application meets the requirements of the ESA, NEPA, and implementing regulations. If we determine all requirements are met, we will approve the HCP and issue the ITP under section 10(a)(1)(B) of the ESA to the Applicant, Wildhorse Mountain Wind Energy, LLC, for take of Indiana bat and northern long-eared bat in accordance with the terms of the HCP and specific terms and conditions of the authorizing permit. We will not make our final decision until after the end of the 30-day public comment period, and we will fully consider all comments we receive during the public comment period.

## **Public Availability of Comments**

Written comments we receive become part of the public record associated with this action. Requests for copies of comments will be handled in accordance with the Freedom of Information Act, NEPA, and Service and Department of the Interior policies and procedures. Before including your address, phone number, email address, or other personal identifying information in your comment, you should be aware that the entire comment—including your personal identifying information—may be made publicly available at any time. While you can ask us in your comment to withhold your personal identifying information from public review, we cannot guarantee that we will be able to do so. All submissions from organizations or businesses, and from individuals identifying themselves as representatives or officials of organizations or businesses, will be made available for public disclosure in their entirety.

## **Authority**

We provide this notice under the authority of section 10(c) of the ESA and its implementing regulations (50 CFR 17.22 and 17.32) and NEPA (42 U.S.C 4371 *et seq.*) and its implementing regulations (40 CFR 1506.6).

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Amy L. Lueders,  
*Regional Director, Southwest Region,*  
*U.S. Fish and Wildlife Service.*